CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1745

Heard at Montreal, Thursday, 14 January 1988

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Brakeman A. E. McNeil, Medicine Hat, for 54 miles which had been deducted from his trip ticket October 26, 1986.

JOINT STATEMENT OF ISSUE:

Conductor Leuck and Brakeman A. E. McNeil were ordered as a crew at Alyth to deadhead by taxi to Bassano to enter working service at that point. The Brooks Subdivision is located in Manual Block System territory which requires Conductors to copy the necessary Bulletins and Clearances. There are no operators located on the Brooks Subdivision except at Alyth and Medicine Hat. On arrival at the Yard Office at Alyth, Conductor Leuck was instructed to take delivery of the Bulletins that would be required for the operation of his train.

The crew claimed actual miles as payment for the deadheading portion of this tour of duty, however, the Company allowed payment on a time basis only as provided in Article 22(b). As a result, their ticket was reduced by 54 miles. On appeal, Conductor Leuck was allowed the miles claimed because he had been instructed to carry, and made responsible for, MBS Bulletins while deadheading. Brakeman McNeil was not paid the miles because he was not required to handle the MBS Bulletins while deadheading.

The Union contends that Brakeman McNeil should also be paid the 54 miles as he was a working member of the crew and had to be familiar with the MBS Bulletins and Clearances as a member of that crew in accordance with the Uniform Code of Operating Rules.

Therefore, for reasons outlined above, the Union contends that you cannot differentiate between a Conductor's and a Brakeman's duties in this instance and Brakeman McNeil is entitled to submit his claim accordingly.

The Company contends that Brakeman McNeil was deadheading only and had no additional responsibilities assigned to him. He was properly paid for this deadheading on a time basis only in accordance with Article 22(b). His claim for additional payment has been declined.

FOR THE COMPANY: FOR THE UNION:

(SGD) J. M. WHITE
General Manager
Operation & Maintenance
West

(SGD) I. ROBB
General Chairman

There appeared on behalf of the Company:

J.J. Robson	Assistant Supervisor, Labour Relations Vancouver
B.P. Scott	Labour Relations Officer, Montreal
L.J. Guenther	Assistant Supervisor, Labour Relations, Winnipeg
R.J. Pelland	Observer

And on behalf of the Union:

W.M Jessop	General Chairman, Calgary
B. Marcolini	Vice-President, Ottawa
J. Shannon	Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

It is common ground that the Company was not obliged to give the MBS bulletins to Conductor Leuck to transport while deadheading. It is also not disputed that as a general matter, apart from work within a terminal of departure or destination, the members of train crews are paid en route on the same basis, depending on their class of service. That is the general rule apart from specific exceptions provided within the Collective Agreement.

There is nothing in the Collective Agreement that appears to contemplate the different treatment of crew members for the purposes of remuneration while deadheading. Nor was the Arbitrator directed to any provision of the agreement whereby a member of a crew which is called as a crew to deadhead can be treated more advantageously than other members of the crew when they travel together, in response to the same call. The Company submits that the payment of a higher rate to Conductor Leuck was gratuitous, and does not fall under any provision of the Collective Agreement. The Union maintains, on the other hand, that it is not open to the Company to make such distinctions in the treatment of employees who are called as a crew.

In the Arbitrator's view this grievance is best resolved by reference to the general scheme of the Collective Agreement in respect of remuneration of crews, and such evidence as there may be in respect of practice. While the matter is not without some doubt, it appears, on the balance of probabilities, that in at least one prior instance the Company has adopted an approach consistent with the interpretation of the Union. In some locations where crew members who would otherwise be deadheading are required by the Company to transport radios while deadheading, they are paid at a rate higher than the rate provided for deadheading in the Collective Agreement.

It would seem that that is so even where some members of the crew do not carry a radio while others do. In the Arbitrator's view it is difficult to distinguish that situation from the facts at hand. Given that precedent, and the general framework for the uniform payment of crew members en route found within the Collective Agreement, the Arbitrator is compelled to accept the position advanced by the Union in the circumstances. I must find that by assigning to Conductor Leuck the carriage of MBS bulletins, the Company must be taken to have vested that assignment in his crew, including Brakeman McNeil.

For these reasons the grievance must be allowed. Brakeman McNeil shall be compensated in accordance with the allowance for miles claimed paid to Conductor Leuck in respect of his trip ticket of October 26, 1986. I retain jurisdiction in the event of any dispute in respect of the amount of compensation.

MICHEL G. PICHER
ARBITRATOR